PETITION AND TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 308

THE UNITED STATES, PETITIONER

vs.

MEMPHIS COTTON OIL COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED AUGUST 19, 1932
CERTIORARI GRANTED OCTOBER 17, 1932

SUPREME COURT OF THE UNITED STATES

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THE UNITED STATES, PETITIONER

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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1 In the Supreme Court of the United States

October term, 1932

No. 308

THE UNITED STATES, PETITIONER

v

MEMPHIS COTTON OIL COMPANY

Petition for a writ of certiorari to the Court of Claims

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims in the above case rendered May 31, 1932, but not yet officially reported.

QUESTION PRESENTED

Whether the respondent may maintain its suit for the refund of 1922 and 1923 taxes where the only claims for refund filed contained no statement of the grounds relied upon but where the commissioner, through a report of the revenue agent, learned facts which if presented in a claim should have caused a refund. The claims were duly filed. The report reached the commissioner after the expiration of the period for filing a claim for refund of the 1923 taxes but before the expiration of the period for filing a claim for the 1923 taxes.

2 STATUTE AND REGULATIONS INVOLVED

R. S. 3228 (a) as reenacted in section 1012 of the revenue act of 1924, c. 234, 43 Stat. 253, 342, provides:

"SEC. 3228. (a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as provided in section 281 of the revenue act of 1924, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum."

R. S. 3226 as reenacted in section 1113 of the revenue act of 1926, c. 27, 44 Stat. 9, 116, provides:

"SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected

until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail."

Section 284 of the revenue act of 1926, c. 27, 44 Stat. 9, 66, provides in part as follows:

"SEC. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this act, * * * the revenue act of 1917, the revenue act of 1918, the revenue act of 1921, or the revenue act of 1924, or any such act as amended,
3 the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

"(b) Except as provided in subdivisions (c), (d), (e), and (g) of this section—

"(1) No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior act, unless before the expiration of such period a claim therefor is filed by the taxpayer; and

"(2) The amount of the credit or refund shall not exceed the portion of the tax paid during the three or four years, respectively, immediately preceding the filing of the claim, or if no claim was filed, then during the three or four years, respectively, immediately preceding the allowance of the credit or refund."

Article 1036 of Regulations 62, promulgated under the revenue act of 1921, provides in part:

"*Claims for refund of taxes erroneously collected.*—Claims by the taxpayer for the refunding of taxes and penalties erroneously or illegally collected shall be made on Form 843. In this case the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath."

Similar regulations have been in force under all the income tax acts.

STATEMENT

Respondent sued in the Court of Claims to recover overpayments of income taxes for the years 1922 and 1923 amounting to $6,496.46. The court found the facts as follows:

The respondent paid the last installment of its 1922 taxes on December 7, 1923. It overpaid this tax in the amount of
4 $1,660.70. The respondent paid the last installment of its 1923 tax on December 6, 1924. It overpaid this tax in the amount of $4,835.76.

A timely claim for refund for 1922 was filed on June 30, 1927. The claim specified no grounds but stated as follows:

"Deponent verily believes that this application should be allowed for the following reasons:

"The statement attached hereto shows—

1. That the amount of tax paid for this year was	$25,626.25
2. And that the correct amount of tax due was	24,296.56
3. And there was overpaid in error	1,329.69
4. Refund of which is requested and with interest as provided by law.	

"The statement attached to this claim by the plaintiff stated as follows:

Net income per books	$159,836.71
Taxable net income	194,372.46
Difference	34,535.75

Computation of tax

Net income	$194,372.46
12½ per cent	24,296.56
Previously paid	25,626.25
Overpaid	1,329.69

On the same day a timely claim for 1923 was filed by the respondent in form identical to that used in the 1922 claim with no statement of the grounds relied on. No further claims were ever filed by the respondent.

The matter was referred by the commissioner to the revenue agent in the respondent's district to examine the respondent's books and make a detailed report to the commissioner. This report was received by the commissioner on February 7, 1928, before the expiration of the time for filing claims for refund in 1923 taxes but after the expiration of the time during which respondent might have filed a claim for refund of 1922 taxes. This report showed that the
5 respondent had been overassessed. The deputy commissioner then wrote the respondent that a certificate of overassessment would issue in due course. Later, after further examination, the deputy commissioner wrote the respondent that as no evidence had been filed to support the general claims filed by the respondent the claims would be rejected. In due course, on October 23, 1929, the

respondent's claims for refund of 1922 and 1923 were rejected on the ground that they were not sufficient under the statute and that, therefore, allowance and refund of the overpayments for 1922 and 1923 were barred by the statute of limitations.

SPECIFICATION OF ERRORS

1. The Court of Claims erred in holding that a timely claim for refund specifying no grounds may support a suit for refund of taxes because the commissioner, through a revenue agent, learned that an overpayment had been made by the respondent.

2. The Court of Claims erred in giving judgment for the respondent.

REASONS FOR GRANTING THE WRIT

1. The United States has filed a petition for a writ of certiorari to the Court of Claims in a similar case, No. 141, The United States v. Factors & Finance Company. The Court of Claims decision in the instant case is based upon its earlier decision in the Factors & Finance Company case. The authorities cited by the Government in that petition, as conflicting with the Court of Claims decision, are also in conflict with the present decision. The
6 questions presented by the two cases are similar. They arise under the same statutory provisions and are of equally great importance in the administration of the revenue acts.

2. The decision in the instant case is an extension of the doctrine laid down by the Court of Claims in the Factors & Finance Company case. In the instant case the taxpayer never filed any paper specifying the nature of its claim for refund. The commissioner's knowledge of grounds on which a claim might have been based came solely through his own agents. As to one of the taxable years in question that knowledge reached the commissioner at a date when the period for filing a claim for refund of taxes for that year had expired. As to both years the taxpayer entirely failed to follow the statutory requirement that the facts relied upon in support of the claim should be clearly set out. If the decision of the Court of Claims in the instant case is correct, the strict requirements of the statute that claims for refund be filed by taxpayers are almost entirely abrogated. In such an event a taxpayer who had filed a general claim within time could secure a refund if entirely without the taxpayer's knowledge the commissioner had learned that an overpayment of taxes had been made by him.

CONCLUSION

Wherefore it is respectfully submitted that this petition should be granted.

THOMAS D. THACHER,
Solicitor General.

AUGUST, 1932.

[Title and index omitted.]

7 IN THE COURT OF CLAIMS OF THE UNITED STATES

No. L–173

MEMPHIS COTTON OIL COMPANY, PLAINTIFF,

vs.

UNITED STATES, DEFENDANT.

I. *Petition*

Filed May 8, 1930

To the honorable the Chief Justice and the Judges of the Court of Claims:

The plaintiff, Memphis Cotton Oil Company, files this its petition and respectfully alleges:

I

That the plaintiff is a corporation organized under the laws of the State of Texas, with principal place of business at Memphis, Texas.

II

That the plaintiff is a citizen of the United States, and has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given
8 encouragement to rebellion against the Government of the United States.

III

That this is a suit against the United States to enforce certain claims for refund of income taxes and interest paid, which said claims are founded upon a law of Congress, and particularly upon a law providing for internal revenue.

IV

That the plaintiff duly made and filed with the collector of internal revenue for the second district of Texas its income-tax returns for the calendar years 1922 and 1923, respectively, as required by the revenue act of 1921 and as required by the rules and regulations of the United States Treasury Department relating thereto; that in its said return for the year 1922 the plaintiff showed a taxable net income of two hundred five thousand ten dollars and two cents ($205,010.02) and an income tax due thereon of twenty-five thousand six hundred twenty-six dollars and twenty-five cents ($25,626.25); that said tax of twenty-five thousand six hundred twenty-

six dollars and twenty-five cents ($25,626.25) was paid by the plaintiff to the said collector as follows: Six thousand two hundred fifty dollars ($6,250.00) on March 10, 1923; six thousand five hundred sixty-three dollars and twelve cents ($6,563.12) on June 11, 1923; six thousand four hundred six dollars and fifty-seven cents
9 ($6,406.57) on September 10th, 1923; and six thousand four hundred six dollars and fifty-six cents ($6,406.56) on December 2nd, 1923; that in its said return for the year 1923 the plaintiff showed a taxable net income of forty-four thousand six hundred thirty-one dollars and eight cents ($44,631.08) and an income tax due thereon of five thousand five hundred seventy-eight dollars and eighty-five cents ($5,578.85); that said tax of five thousand five hundred seventy-eight dollars and eighty-five cents ($5,578.85) was paid by the plaintiff to the said collector as follows: One thousand three hundred ninety-three dollars and ninety-four cents ($1,393.94) on March 13th, 1924; one thousand three hundred ninety-three dollars and ninety-eight cents ($1,393.98) on June 9th, 1924; one thousand three hundred ninety-five dollars and forty-eight cents ($1,395.48) on September 10th, 1924; and one thousand three hundred ninety-five dollars and forty-nine cents ($1,395.49) on December 3rd, 1924.

V

That in its return for the year 1922 the plaintiff erroneously reported its taxable net income for said year as two hundred five thousand ten dollars and two cents ($205,010.02), and erroneously paid an income tax thereon amounting to twenty-five thousand six hundred twenty-six dollars and twenty-five cents ($25,626.25); that the correct taxable net income for the plaintiff for the
10 year 1922 was one hundred eighty-two thousand five hundred fifteen dollars and forty-three cents ($182,515.43), and the correct income tax payable thereon was twenty-three thousand nine hundred sixty-five dollars and fifty-five cents ($23,965.55); that in its return for the year 1923 the plaintiff erroneously reported its taxable net income for said year as forty-four thousand six hundred thirty-one dollars and eight cents ($44,631.08) and erroneously paid an income tax thereon amounting to five thousand five hundred seventy-eight dollars and eighty-five cents ($5,578.85); that the correct taxable net income of the plaintiff for the year 1923 was seven thousand nine hundred forty-five dollars and three cents ($7,945.03), and the correct income tax payable thereon was seven hundred forty-three dollars and thirteen cents ($743.13); that the plaintiff overpaid its income taxes for the years 1922 and 1923 in the respective amounts of one thousand six hundred sixty dollars and seventy cents ($1,660.70), and four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76).

VI

That the collection from the plaintiff by said collector of an amount in excess of twenty-three thousand nine hundred sixty-five dollars and fifty-five cents ($23,965.55) for the year 1922, viz, one thousand six hundred sixty dollars and seventy cents ($1,660.70), and of an amount in excess of seven hundred forty-three
11 dollars and thirteen cents ($743.13) for the year 1923, viz, four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76), was illegal, erroneous, and contrary to law for that:

Said excess tax of one thousand six hundred sixty dollars and seventy cents ($1,660.70) for the year 1922 was computed upon an alleged taxable net income of two hundred five thousand ten dollars and two cents ($205,010.02), whereas the correct taxable net income of the plaintiff for said year was one hundred eighty-two thousand five hundred fifteen dollars and forty-three cents ($182,515.43); and said excess tax of four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76) for the year 1923 was computed upon an alleged taxable net income for forty-four thousand six hundred thirty-one dollars and eight cents ($44,631.08), whereas the correct taxable net income of the plaintiff for said year was seven thousand nine hundred forty-five dollars and three cents ($7,945.03).

VII

That on or about June 30, 1927, the plaintiff duly filed with said collector its claim for refund for the year 1922, on Treasury Department Internal Revenue Service Form 843, and duly demanded the refund and repayment to itself of one thousand three hundred twenty-nine dollars and sixty-nine cents ($1,329.69) for the year 1922, or such greater amount as was legally refundable as
12 provided in said form, together with interest thereon, erroneously collected from the plaintiff by said collector, as aforesaid, all in accordance with the provisions of law in that regard and the regulations of the Secretary of the Treasury established and promulgated in pursuance thereof; that on or about June 30, 1927, the plaintiff duly filed with said collector its claim for refund for the year 1923, on Treasury Department Internal Revenue Service Form 843, and duly demanded the refund and repayment to itself of one thousand eight hundred thirteen dollars and thirty-nine cents ($1,813.39) for the year 1923, or such greater amount as was legally refundable, as provided in said form, together with interest thereon, erroneously collected from the plaintiff by said collector, as aforesaid, all in accordance with the provisions of law in that regard and the regulations of the Secretary of the Treasury established and

promulgated in pursuance thereof; that copies of said claims for refund for the years 1922 and 1923 are attached hereto and made a part hereof and marked " Exhibits Nos. 1 and 2," respectively.

VIII

That in its claim for refund for the year 1922 the plaintiff stated that its net income per books for said year was one hundred fifty-nine thousand eight hundred thirty-six dollars and seventy-one cents ($159,836.71), that said amount should be increased by thirty-four thousand five hundred thirty-five dollars and seventy-
13 five cents ($34,535.75), representing income taxes paid for the year 1921 during the year 1922, and that the taxable net income on which said claim was based was one hundred ninety-four thousand three hundred seventy-two dollars and forty-six cents ($194,372.46) for said year, that in its claim for refund for the year 1922 the plaintiff stated that its net loss per books for said year was three thousand seven hundred eighty-one dollars and one cent ($3,781.01), that an adjustment in the amount of thirty-three thousand nine hundred four dollars and seventy-two cents ($33,-904.72) should be made representing income taxes paid for the year 1922 during the year 1923, and that the taxable net income on which the claim was based was thirty thousand one hundred twenty-three dollars and seventy-one cents ($30,123.71) for said year.

IX

That in order to pass upon the merits of the plaintiff's said claims for refund for the years 1922 and 1923, the Commissioner of Internal Revenue caused the books of the plaintiff for said years to be audited by one C. C. Dubbs, an internal revenue agent of the office of the internal revenue agent in charge at Dallas, Texas; that said internal revenue agent made a report of his findings to the Commissioner of Internal Revenue under date of February 7, 1928; that a copy of said report was furnished to the plaintiff by the internal revenue agent in charge at Dallas, Texas, under date of April
14 12, 1928; that said internal revenue agent found that the taxable net income of the plaintiff for the year 1922 was one hundred eighty-two thousand five hundred fifteen dollars and forty-three cents ($182,515.43), that the correct income tax payable by the plaintiff for said year was twenty-three thousand nine hundred sixty-five dollars and fifty-five cents ($23,965.55), and that the plaintiff's income tax for said year had been over-assessed in the amount of one thousand six hundred sixty dollars and seventy cents ($1,660.70); that said internal revenue agent further found that the taxable net income of the plaintiff for the year 1923 was seven thousand nine hundred forty-five dollars and three cents ($7,945.03), that the correct income tax payable by the plaintiff for said year was seven hundred forty-three dollars and thirteen cents ($743.13),

and that the plaintiff's income tax for said year had been over-assessed in the amount of four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76); and that a copy of said report in so far as it refers to the years 1922 and 1923 is attached hereto and marked "Exhibit No. 3."

X

That subsequent to causing the books of the plaintiff for the years 1922 and 1923 to be audited, as aforesaid, C. B. Allen, Deputy Commissioner of Internal Revenue, in charge of income taxes, on August 9, 1928, wrote a letter to the plaintiff in which he sustained said internal revenue agent, C. C. Dubbs, and found that the plaintiff's income taxes for the years 1922 and 1923 had been over-assessed in the amounts of one thousand six hundred sixty dollars and seventy cents ($1,660.70), and four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76), respectively; that said letter of the Deputy Commissioner of Internal Revenue stated that the plaintiff's said claims for refund for the years 1922 and 1923 had been given careful consideration and adjusted in accordance with the findings outlined in said letter, and that said over-assessments of one thousand six hundred sixty dollars and seventy cents ($1,660.70) and four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76) for the years 1922 and 1923, respectively, would be made the subject of certificates of over-assessments, which would reach the plaintiff through the office of the Collector of internal revenue for plaintiff's district; that a copy of the Deputy Commissioner of Internal Revenue's said letter of August 9, 1928, in so far as it pertains to the years 1922 and 1923, is attached hereto and made a part hereof and marked "Exhibit No. 4."

15

XI

That after the receipt of said letter of August 9, 1928, of C. B. Allen, Deputy Commissioner of Internal Revenue, in charge of income taxes, as aforesaid, the plaintiff on or about September 7, 1928, protested against the amount of depreciation allowed for the year 1922 in said letter; that a copy of the portion of Plaintiff's protest pertaining to the year 1922 is as follows:

16

"Year 1922

"According to Exhibit N of the revenue agent's report, the taxpayer was entitled to depreciation for 1922 in the amount of $14,-116.18, or $6,200.83 in addition to the amount claimed in its books. Instead of allowing the additional depreciation of $6,200.83, however, the commissioner took the figures from the 1921 column of Exhibit N and allowed additional depreciation of only $3,506.36. The commissioner accordingly should allow additional depreciation based upon his own computations equal to the difference between $6,200.83 and $3,506.36 for the year 1922."

XII

That on October 13, 1928, the said C. B. Allen, Deputy Commissioner of Internal Revenue, in charge of income taxes, addressed another letter to the plaintiff in which he denied the plaintiff's said protest with respect to depreciation for the year 1922, and sustained his own previous findings as outlined in his letter to the plaintiff under date of August 9, 1928; that said letter of the Deputy Commissioner of Internal Revenue of October 13, 1928, similarly stated that the plaintiff's said claims for refund for the years 1922 and 1923 had been given careful consideration and adjusted in accordance with the findings outlined in said letter, and that said over-assessments of one thousand six hundred sixty dollars
17 and seventy cents ($1,660.70), and four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76) for the years 1922 and 1923, respectively, would be made the subject of certificates of overassessments, which would reach the plaintiff through the office of the collector of internal revenue for plaintiff's district; that a copy of the Deputy Commissioner of Internal Revenue's said letter of October 13, 1928, in so far as it pertains to the years 1922 and 1923 is attached hereto and made a part hereof and marked "Exhibit No. 5"; that the said deputy commissioner's letter of October 13, 1928, is identical with his letter of August 9, 1928, in so far as it pertains to the years 1922 and 1923.

XIII

That on January 26, 1929, the said C. B. Allen, Deputy Commissioner of Internal Revenue, in charge of income taxes, addressed another letter to the plaintiff, wherein it was stated that the plaintiff's said claims for refund for the years 1922 and 1923 would be rejected, for the alleged reason that said claims did not comply with article 1304 of Regulations 69, in that said claims did not set forth in detail under oath all facts relied upon in support of said claims; that a copy of the said deputy commissioner's letter of January 29, 1929, is attached hereto and made a part hereof and marked "Exhibit No. 6."

XIV

That on April 2, 1929, without admitting that its original
18 claims for refund for the years 1922 and 1923 were inadequate, the plaintiff amended its said claims for refund for the years 1922 and 1923 by specifically claiming refunds of one thousand six hundred sixty dollars and seventy cents ($1,660.70), and four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76), respectively, to which was attached a copy of the letter of October 13, 1928, of the Deputy Commissioner of Internal Revenue, in charge of income taxes, which said letter found overassessments

of said respective amounts; that a copy of the plaintiff's said amendment of its claims for refund for the years 1922 and 1923 is attached hereto and made a part hereof, and marked "Exhibit No. 7," except that the copy of the deputy commissioner's said letter of October 13, 1928, is omitted from said Exhibit No 7, the pertinent portion of said letter being set out in Exhibit No. 5, supra.

XV

That the said C. B. Allen was, at the time said respective letters of August 9, 1928, October 13, 1928, and January 26, 1929, were written to the plaintiff, the duly appointed, qualified and acting Deputy Commissioner of Internal Revenue in charge of income taxes, with full power and authority to make the findings and decisions set forth in said letters to the same extent and purpose as though made by the Commissioner of Internal Revenue personally.

19

XVI

That on or about October 23, 1929, the Commissioner of Internal Revenue rejected the plaintiff's said claims for refund and said amended claims for refund for the years 1922 and 1923, pursuant to letter of April 2, 1929, of said Deputy Commissioner of Internal Revenue in charge of income taxes, and notified the plaintiff of such rejection on or about October 23, 1928.

XVII

That the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury promulgated article 1304 of Regulations 69 with respect to claims for refund, which reads in part as follows:

"Claims by the taxpayer for the refunding of taxes, interest, penalties, and additions to tax erroneously or illegally collected shall be made on Form 843. All facts relied upon in support of the claim should be clearly set forth in detail under oath."

That the plaintiff's said original claims for refund for the years 1922 and 1923 complied with the requirements of said article 1304 of Regulations 69 in that (1) plaintiff's said original claim for refund for the year 1922 was made on Form 843 and contained a statement under oath that the net income of the plaintiff per books for said year was one hundred fifty-nine thousand eight hundred thirty-six dollars and seventy-one cents ($159,836.71), and that the plain-

20 tiff's correct taxable net income for said year was one hundred ninety-four thousand three hundred seventy-two dollars and forty-six cents ($194,372.46), the difference of thirty-four thousand five hundred thirty-five dollars and seventy-five cents ($34,535.75) being represented by income taxes paid in said amount by the plaintiff during the year 1922 for the year 1921, and (2) plaintiff's said

original claim for refund for the year 1923 was made on Form 843 and contained a statement under oath that the net loss of plaintiff per books for said year was three thousand seven hundred eighty-one dollars and one cent ($3,781.01), and that the plaintiff's correct taxable net income was thirty thousand one hundred twenty-three dollars and seventy-one cents ($30,123.71), the difference of thirty-three thousand nine hundred four dollars and seventy-two cents ($33,904.72) being represented by income taxes paid by the plaintiff during the year 1923 for the year 1922; that the statements made in plaintiff's said original claims for refund for the years 1922 and 1923 were sufficient to apprise the Commissioner of Internal Revenue of the nature of plaintiff's said claims, as is evidenced by the fact that the Commissioner of Internal Revenue audited the books of the plaintiff and passed upon the merits of the plaintiff's said original claims for refund for the years 1922 and 1923, and found and determined the overassessments for said years as set forth in Paragraphs IX, X, and XII, supra.

21

XVIII

That if the plaintiff's said original claims for refund for the years 1922 and 1923 did not set forth in detail under oath all facts relied upon by it in support of said claims, in compliance with said article 1304 of Regulations 69, the action of the Commissioner of Internal Revenue in causing the books of the plaintiff to be audited by a revenue agent, as set forth in Paragraph IX, supra, and the action of the Deputy Commissioner of Internal Revenue, in charge of income taxes, in finding the over-assessments for the years 1922 and 1923, as set forth in Paragraphs X and XII, supra, constituted a waiver on the part of the Commissioner of Internal Revenue of the requirements of said article 1304 of Regulations 69.

XIX

That if the plaintiff's said original claims for refund for the years 1922 and 1923 did not comply with said article 1304 of Regulations 69, the plaintiff's amended claims for refund for said years, filed on April 2, 1929, as set out in Paragraph XIV, supra, did comply with said article 1304 of Regulations 69, in that plaintiff's said amended claims for refund contained a detailed statement of the facts relied upon, to wit, a copy of the portion of the letter of October 13, 1928, of the Deputy Commissioner of Internal Revenue in charge of income taxes, pertaining to the years 1922 and 1923.

22

XX

That sections 284 (a) and 284 (b) (1) of the revenue act of 1926 apply to the allowance and filing of claims for refund of income

taxes for the years 1922 and 1923; that the applicable portions of said sections read as follows:

"SEC. 284. (a). Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by * * * the revenue act of 1921, * * * or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

"SEC. 284. (b) (1). No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior act, unless before the expiration of such period a claim therefor is filed by the taxpayer; and"

that said sections require the filing of claims for refund for the overpayment of income taxes made for the years 1922 and 1923; that said sections do not require all facts relied upon by the plaintiff in support of its said claims for 1922 and 1923 to be clearly set forth in detail under oath as specified by said art. 1304 of Reg. 69; that claims for refund for said years 1922 and 1923 sufficiently comply with said sec. 284 (a) and sec. 284 (b) (1) of the revenue act of 1926, if they set forth the amount of net income or net loss for said respective years, per the books of the taxpayer, with necessary adjustments to show the taxable net income for said years; that the plaintiff's said claims for refund for the years 1922 and 1923 compiled with said secs. 284 (a) and 284 (b) of the revenue act of 1926, for that (1) said claims made demand for certain overpayments of income taxes for said respective years; (2) said claims set forth the net income and net loss, per the books of the plaintiff, for said respective years 1922 and 1923; (3) said claims made certain adjustments on account of income taxes paid during said respective years; and (4) said claims disclosed the taxable net income of the plaintiff for said respective years, as set forth in more detail in Paragraphs VII and VIII, supra; that if said article 1304 of Regulations 69 requires the plaintiff to file with its claims for refund for the years 1922 and 1923 evidence in addition to that filed with said claims, said article 1304 of Regulations 69 is repugnant to said sections 284 (a) and 284 (b) of the revenue act of 1926, and, therefore, void and of no force and effect.

23

XXI

That no action has been taken on the plaintiff's said claims for refund by Congress or by any of the departments or in any court except as above set forth. Claimant is the owner of said claims for refund and has made no assignment thereof, or of any part thereof, or of any interest therein.

24 XXII

That although duly demanded, said sums of one thousand six hundred sixty dollars and seventy cents ($1,660.70), representing overpayment of income taxes made for the year 1922, and four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76), representing overpayment of income taxes made for the year 1923, have not, nor has any part thereof, been paid to the plaintiff, and there is now due and owing to the plaintiff from the defendants, after allowing all just credits and offsets, the sum of one thousand six hundred sixty dollars and seventy cents ($1,660.70), representing overpayment of income taxes made for the year 1922, and the sum of four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76), representing overpayment of income taxes for the year 1923, with interest on said sum of one thousand six hundred sixty dollars and seventy cents ($1,660.70) at the rate of six per cent (6%) from December 2, 1923, and interest on said sum of four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76) at the rate of six per cent (6%) as follows:

On six hundred fifty dollars and eighty-one cents ($650.81) from March 13, 1924; on one thousand three hundred ninety-three dollars and ninety-eight cents ($1,393.98) from June 9, 1924; on one thousand three hundred ninety-five dollars and forty-eight cents ($1,395.48) from September 10, 1924; and on one thousand three hundred ninety-five dollars and forty-nine cents ($1,395.49) from December 3, 1924.

25 Wherefore, the plaintiff demands judgment against the United States for the sum of one thousand six hundred sixty dollars and seventy cents ($1,660.70), with interest thereon at the rate of six per cent (6%) from December 2, 1923, and the sum of four thousand eight hundred thirty-five dollars and seventy-six cents ($4,835.76), with interest thereon at the rate of six per cent (6%) as follows: On six hundred fifty dollars and eighty-one cents ($650.81) from March 13, 1924; on one thousand three hundred ninety-three dollars and ninety-eight cents ($1,393.98) from June 9, 1924; on one thousand three hundred ninety-five dollars and forty-eight cents ($1,395.48) from September 10, 1924; and on one thousand three hundred ninety-five dollars and forty-nine cents ($1,395.49) from December 3, 1924; together with the costs and disbursements of this action.

WALTER E. BARTON,
Investment Bldg., Washington, D. C.,
Attorney for Plaintiff.

R. C. WINTERS,
Park Building, Abilene, Texas,
RAYMOND C. CUSHWA,
Investment Bldg., Washington, D. C.,
Of Counsel.

26 [*Duly sworn to by F. N. Foxhall; jurat omitted in printing.*]

27

EXHIBIT NO. "1"—to petition

(EXECUTE SEPARATE FORM FOR EACH TAX PERIOD)

TREASURY DEPARTMENT
(For Use of INTERNAL REVENUE SERVICE)
Form 843—Rev., 1929
Comptroller General U.S.
January 10, 1923

CLAIM FOR

- [ ] ABATEMENT OF TAX ASSESSED
- [ ] CREDIT AGAINST OUTSTANDING ASSESSMENTS
- [XXX] REFUND OF TAXES ILLEGALLY COLLECTED
- [ ] REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS

IMPORTANT
File with Collector of Internal Revenue whose assessment you seek. Not acceptable unless previously filed so.

COLLECTOR'S NOTATION
District
Account number
Date received
EXHIBIT NO. "1"
Stamp here
Collector of Internal Revenue

State of TEXAS, ss:
County of HALL,

NOTICE TO COLLECTOR
Collector must indicate in block above the kind of claim, except in Income Tax cases.

Date received by Administrative Unit
Stamp here

TYPE or PRINT

MEMPHIS COTTON OIL COMPANY
(Name of taxpayer or purchaser of stamps.)

(Residence—give street and number as well as city or town and State.)

MEMPHIS, TEXAS.
(Business address.)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

1. Business in which engaged Cotton Seed Crushers
2. Character of assessment or tax Income Tax
(State for or upon what the tax was assessed or the stamps affixed.)
3. Amount of assessment or stamps purchased
4. Reduction of Tax Liability requested (Income and Profits Tax)
5. Amount to be abated
6. Amount to be refunded (or such greater amount as is legally refundable)
7. Dates of payment (see Collector's receipts or indorsements of canceled checks)
(If statement covers income tax liability, items 8-14, inclusive, must be answered.)
8. District in which return (if any) was filed Dallas
9. District in which unpaid assessment appears
10. Amount of overpayment claimed as credit
11. Unpaid assessment against which credit is asked; period from to

PERIOD	YEAR
From Jan. 1,	1922
To Dec. 31,	1922
	$ 25,626.25
	$ 1,329.69
	$
	$ 1,329.69
	$
	$

Deponent verily believes that this application should be allowed for the following reasons:

The Statement attached hereto shows:

1. That the amount of tax paid for this year was $25,626.25

2. And that the correct amount of tax due was 24,296.56

3. And there was overpaid in error $ 1,329.69

4. Refund of which is requested and with interest as provided by law.

(Attach additional sheets if necessary.)

Sworn to and subscribed before me this 30th day
December 1926

Signed:

(Signed): JOHN M. DEATHER
(SEAL) Notary Public, Hall Co. Texas.
(Title)

MEMPHIS COTTON OIL CO. (SEAL)
Signed:
By: F. N. Foxhall
President.

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

137675—32——2

28

MEMPHIS COTTON OIL COMPANY
Memphis, Texas
Calendar Year 1922

Net income per books	$159,836.71
Taxable net income	194,372.46
Difference	$34,535.75

Viz.:

Income tax paid, $34,535.75.

Computation of Tax

Net income	$194,372.46
12½%	24,296.56
Previously paid	25,626.25
Overpaid	$1,329.69

29

EXHIBIT NO. "2"—to petition

(EXECUTE SEPARATE FORM FOR EACH TAX PERIOD)

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Form 843—Jan., 1923
Commissioner's Council, U.A.
January 18, 1923

IMPORTANT
File with Collector of Internal Revenue where assessment was made. Not acceptable unless completely filled in.

CLAIM FOR

- ☐ ABATEMENT OF TAX ASSESSED
- ☐ CREDIT AGAINST OUTSTANDING ASSESSMENTS
- XXX REFUND OF TAXES ILLEGALLY COLLECTED
- ☐ REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS

COLLECTOR'S NOTATION
Amount
Assessed number
Date received
EXHIBIT NO. "2"
Name here
Collector of Internal Revenue

State of TEXAS } ss:
County of HALL }

NOTICE TO COLLECTOR
Collector must indicate in block above any kind of claim, except in Income Tax cases.

Date received by Asst. Commissioner
Name here

MEMPHIS COTTON OIL COMPANY
(Name of taxpayer or purchaser of stamps.)

TYPE OR PRINT

(Residence—give street and number as well as city or town and State.)
MEMPHIS, TEXAS.
(Business address.)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

	PERIOD	YEAR
	From Jan. 1	19 22
	To Dec. 31,	19 22

1. Business in which engaged Cotton Seed Crushers
2. Character of assessment or tax Income Tax
(State for or upon what the tax was assessed or the stamps affixed.)
3. Amount of assessment or stamps purchased $5,578.85
4. Reduction of Tax Liability requested (Income and Profits Tax) $1,813.39
5. Amount to be abated ..... $
6. Amount to be refunded (or such greater amount as is legally refundable) $1,813.39
7. Date of payment (see Collector's receipts or indorsements of canceled checks) .....
(If statement covers income tax liability, items 8-11, inclusive, must be answered.)
8. District in which return (if any) was filed Dallas
9. District in which unpaid assessment appears .....
10. Amount of overpayment claimed as credit ..... $
11. Unpaid assessment against which credit is asked; period from ..... to ..... $

Deponent verily believes that this application should be allowed for the following reasons:

The Statement attached hereto shows:

1. The tax paid as $5,578.85

2. The correct tax due, as $3,765.46

3. Tax overpaid in error $1,813.39

4. Refund of which is requested and with interest as provided by law.

(Attach additional sheets if necessary.)

Sworn to and subscribed before me this 30th day of December, 19 26

Signed: (SEAL)
Signed]: JOHN M. BEAVER
(SEAL) Notary Public, Hall Co. Texas
(Title.)

MEMPHIS COTTON OIL CO.
Signed:
By: E. N. FOXHALL,
President.

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

30

MEMPHIS COTTON OIL COMPANY
Memphis, Texas
Calendar Year 1923

Net loss per books	$3,781.01
Taxable net income	30,123.71
Difference	$33,904.72

Viz.:
Income taxes, $33,904.72.

Computation of Tax

Net income	$30,123.71
Tax 12½%	3,765.46
Tax paid	5,578.85
Overpaid	$1,813.39

EXHIBIT NO. "3"—to petition

Name—Memphis Cotton Oil Co.
Schedule 4 Year ended 12/31/22

Net Income

Net income as disclosed by books		$152,007.90
As corrected		182,515.43
Net adjustment		30,507.53
Unallowable deductions and additional income:		
(a) Machinery charged to Repairs	$12,031.97	
(b) Frame Bldg. charged to Repairs	742.15	
(c) Profit on Sale Hedley Lots	600.00	
(d) F. I. Taxes paid	34,535.75	
Total		$47,909.87
Non-taxable income and additional deductions:		
(e) Income from Gins	$2,117.42	
(f) Income from Partnerships	7,749.33	
(g) Depreciation Adjustment	3,506.36	
(h) Loss Sale of Hedley Gin Interest	889.16	
(i) Loss from Liquidations Rosamond Gin Co.	3,140.07	
Total		$17,402.34
Net adjustment as above		$30,507.53

31 Name—Memphis Cotton Oil Co.

Schedule 4–A

Explanation of items changed

(a) Machinery charged to repair account on books, but not deducted in income-tax return. During the period ended 5/31/24 an adjustment was made on the books to capitalize these items. See Item (f), Schedule 10.

(b) The cost of an addition to the office building charged to repair account on the books. An adjustment was made on 5/5/24 which capitalized $158.50 of this amount, which was the labor item. No adjustment was made for the $583.65 material and supplies used.

(c) During the taxable year lots at Hedley, Texas, were sold for $600.00, and the sale price credited to permanent investment account on the books. The examining officer, being unable to find any cost on the books, has closed the entire amount to profit and loss.

(d) Federal income taxes paid during the year, not an allowable deduction from gross income. (Article 561, Regulations 62.)

(e) See Exhibit R attached. Entirely separate books were kept on the gins owned by the mill, and only cash withdrawn or paid in during the year appears as profit or loss on the mill books.

(f) Income from partnerships is changed to agree with reports of examination submitted herewith. (See Exhibit P.) Partnership investment account on the mill books was not adjusted each
32 year for profit or loss, only actual cash withdrawn or paid in being carried to profit and loss.

(g) Additional depreciation allowed. See Exhibit N, depreciation schedule attached.

(h) As at 6/1/22, taxpayer sold 55% of the 50% interest which it owned in the Hedley Gin Company to the Farmers Equity Union of Hedley, Texas. The sale price was credited to gin investment account on the books and no profit or loss computed. The adjustment is as follows:

Memphis C. O. Co's investment A/c in Hedley Gin Company as at 5/31/22 (see partnership report)	$11,616.66
Value of 55% of interest, as sold	6,389.16
Sale price	5,500.00
Loss on sale	889.16

(i) The Rosamond Gin Company, a corporation in which taxpayer was a stockholder, liquidated during 1922. Taxpayer received in liquidation, cash and other assets having a value of less than the cost of the stock. No change was made in gin investment account, to which the cost of the stock had been charged on the books, the

cash received being credited to profit and loss. The adjustment is computed as follows:

Cost of Rosamond Gin Company stock		$47,245.17
Received in Liquidations:		
½ interest in Memphis Gin	$9,946.15	
½ interest in Lodge Gin	23,887.86	
½ interest in Lakeview Gin	10,271.07	
Cash	2,349.05	
		46,454.15
Loss from liquidation		791.02
Profit reported		2,349.05
Net adjustment		3,140.07

33 NOTE.—The book value of the assets distributed is accepted as being the true market value. As a matter of fact, any change in values here would, as a result of subsequent happenings, have very little effect on the tax liability for the period examined. Later, interests in the Memphis and Lakeview gins were sold and the Lodge gin burned.

Schedule 4-B

Income subject to tax at prior year's rates	
Net income from Schedule 4	$182,515.43
Income subject to tax at 1921 rates (7/12 of $5,890.60, income from partnerships with fiscal year closing of May 31st), 1922	3,436.18
Income subject to tax at 1922 rates	179,079.25

Name—Memphis Cotton Oil Co.

Schedule No. 5, year ended 12/31/22

Computation of invested capital

Capital stock		$200,000.00
Surplus		198,578.42
Total corrected balance sheet beginning of year		398,578.42
Deductions:		
(a) Add'l 1917 F. I. tax	$8,278.48	
(b) Add'l 1918 F. I. tax	25,927.80	
(c) Add'l 1919 F. I. tax	6,927.53	
(d) Add'l 1920 F. I. tax	1,153.43	
(e) F. I. tax for 1921 ($25,277.36 pror'd)	10,892.67	
Total (deduct from above)		53,179.91
As shown on exhibit		345,398.51

34 Schedule 5-A

Explanation of items changed

(a), (b), (c), and (d) Invested capital is reduced by additional F. I. taxes assessed for years 1917, 1918, 1919, and 1920, but unpaid on 12/31/20.

(e) Invested capital is reduced by F. I. taxes for 1921, $25,774.51, prorated in accordance with article 845, Regulations 62.

Unchanged

No adjustment is made for inadmissibles for the reason that it is apparent that further adjustment will not affect the tax liability, as the tax will be computed under the highest bracket.

Name—Memphis Cotton Oil Co.

Schedule No. 6, year ended 12/31/22

Computation of tax, 1921 rates—Excess profits tax

Net income, schedule	$182,515.43
Income subject to tax at 1921 rates	3,436.18
Invested capital, Schedule 5	345,398.51
8% of invested capital	27,631.88
Plus exemption, $3,000.00	3,000.00
Total credit	30,631.88

	Income	Credit	Taxable	Rate	Tax
20%	$69,079.70	$30,631.88		20	
Balance	113,436.18		$3,436.18	40	$1,374.47
Total					1,374.47

35 *Income tax*

Net income at 1921 rates	$3,436.18	
Less: Excess profits tax	1,374.47	
Balance taxable at 10%	2,061.71	
Income tax		$206.17
Total income and excess profits tax at 1921 rates		1,580.64

Name of corporation: Memphis Cotton Oil Company

Schedule No. 7

Computation of tax—1922 and subsequent years

Year period ended 12/31/22

Income tax

Net income for taxable year at 1922 rates Sched. 4–B	$179,079.25
Balance subject to tax at 1922 rates	179,079.25
Income and excess profits tax at 1921 rates	1,580.64
Total tax	23,935.55
Total tax assessable	23,965.55
Tax previously assessed	25,626.25
(Overassessment)	$1,660.70

Schedule 8, year ended 12/31/23

Net income

Net income as disclosed by books (loss), return		$31,309.21
As corrected		7,945.03
Net adjustment		39,254.24
(a) Profit on sale interest Quitaque Gin	$655.41	
(b) Bad debts	20,747.24	
(c) F. I. taxes paid	33,904.72	
Total		55,337.37
Nontaxable income and additional deductions:		
(d) Depreciation adjustment	$6,200.83	
(e) Income from gins	967.20	
(f) Income from partnerships	8,915.10	
Total		16,083.13
Net adjustment as above		39,254.24

36

Schedule 8–A

Explanation of items changed

(a) A ¼ interest in the Quitaque Gin as of 6/1/23 was sold to J. T. Nail for $3,750.00. The entire sale price was credited to gin investment account on the books and no profit or loss computed. The adjustment is as follows:

Memphis C. O. Co's investment in Quitaque Gin as at 5/31/23 (see Exhibit T)	$12,258.38
Cost of ¼ interest sold	3,064.59
Sale price	3,750.00
Profit on sale	685.41

(b) On 3/27/23, the taxpayer acquired E. T. Rosamond's ½ interest in the Lakeview, Lodge and Memphis gins and also, certain lots in Memphis, Texas, for the cancellation of $58,724.95 in notes. Gin investment account was charged with $37,977.71 and the balance of the notes were charged to profit and loss. No formal foreclosure proceedings were instituted. The consideration specified in the deeds was the cancellation of the notes. There is no evidence to show that the properties transferred were not worth the full amount of the indebtedness cancelled. Accordingly, the loss is disallowed.

In allocating the cost to the three gins and the other real estate, the examining officer has taken into consideration the prices for which inerests in the Memphis and Lakeview gins were sold in 1925 and 1926, respectively. Owing to the fact that interests in these two gins were sold and the Lodge Gin was destroyed by fire in

37 1925, the adjustment does not result in a very material difference in tax liability for the period of years examined.

The $58,724.95 cost is allocated as follows:

Memphis lots	$4,000.00
Lakeview Gin	13,911.02
Lodge Gin	23,100.62
Memphis Gin	17,713.31
Total	58,724.95

(c) Federal income taxes paid during the taxable year, not allowable deductions from gross income:

Federal income tax for 1922 paid in 1923	$25,626.25
Additional F. I. tax for 1917, paid in 1923	8,278.47
Total	33,904.72

(d) Additional depreciation allowed. See Exhibit N, depreciation schedule.

(e) Income from gins is changed to agree with Exhibit R attached.

(f) Income from partnerships is changed to agree with reports of examination submitted herewith. See Exhibit P attached.

Schedule No. 9

Computation of tax—1922 and subsequent years

Year ended 12/31/23

Income tax

Net income for taxable year	$7,945.03
Exemption	2,000.00
Balance subject to tax at 12½%	5,945.03
Income tax	743.13
Total tax	743.13
Total tax assessable	743.13
Tax previously assessed	5,578.89
Overassessment	4,835.76

38 *Exhibit No. "4"—to petition*

IT:AR:A-4-PAB AUGUST 9, 1928.

MEMPHIS COTTON OIL COMPANY,
Memphis, Texas.

SIRS: A review of the report submitted by the internal revenue agent in charge at Dallas, Texas, covering your tax liability for the years 1921, 1922, and 1923, and the fiscal year ended May 31, 1926, discloses a deficiency of $5,470.51 for the fiscal year ended May 31, 1926, and an overassessment of $11,288.76 for the years 1921, 1922, and 1923.

Enclosed you will find a statement indicating adjustments proposed by this office based upon recommendations of the revenue agent above indicated. If you acquiesce in the proposed adjustments as shown in this letter and the accompanying statement, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:AR:A-4-PAB.

If, however, you do not acquiesce, you are granted 15 days from the date of this letter within which to present a protest with the internal revenue agent in charge, 1512 Allen Building, at Dallas, Texas, against the adjustments proposed herein. The protest and

any additional statements of facts must be executed in triplicate, under oath, and contain the following information:

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation
39 the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed adjustments with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; and (g) in case the taxpayer desires a hearing, a statement to that effect.

If a protest is filed, any additional evidence or briefs of argument submitted will be given careful consideration, and if the commissioner finally determines that there is a deficiency, you will be advised thereof by registered mail in accordance with the provisions of section 274 of the revenue act of 1926. Should you not agree to the deficiency as finally determined by the commissioner, you will be allowed 60 days from the date of mailing of the registered letter (not counting Sunday as the sixtieth day) in which to file a petition with the United States Board of Tax Appeals for redetermination of the deficiency.

Respectfully,

C. B. ALLEN,
Deputy Commissioner.
By
Head of Division.

MEC–1
Enclosures:
Statement
Form 866
Form 882

40 Memphis Cotton Oil Company—Statement

1922

Net income as shown by books		$152,007.90
Add:		
1. Machinery charged to repairs		12,031.97
2. Frame building charged to repairs		742.15
3. Profit on sale of Hedley lots		600.00
4. Federal income taxes		34,535.75
		199,917.77
Deduct:		
5. Income from gins	$2,117.42	
6. Income from partnerships	7,749.33	
7. Depreciation	3,506.36	
8. Loss on sale of Hedley Gin	889.16	
9. Loss—Rosamond Gin Co. stock	3,140.07	
		17,402.34
Net income as adjusted		182,515.43

Explanation of changes

1 and 2. See Explanation No. 4 under 1921.

3. Profit on sale of lots has been computed in accordance with article 1561, Regulations 62, as follows:

Cost	None.
Sale Price	$600.00
Profit	600.00

4. See Explanation No. 1 under 1921.

5. See Explanation No. 2 under 1921.

6. See Explanation No. 6 under 1921.

7. See Explanation No. 7 under 1921.

8. Loss on sale of Hedley Gin has been allowed in accordance with article 1561, Regulations 62, as follows:

Value of interest sold	$6,389.16
Sale price	5,500.00
Loss	889.16

41 9. Loss on stock of Rosamond Gin Company has been allowed in accordance with article 144, Regulations 62, as follows:

Cost		$47,245.17
Received		46,454.15
Loss adjusted		791.02
Profit reported		2,349.05
Loss allowed		3,140.07

Income subject to tax at 1921 rates

Net income	$182,515.43
Income subject to tax at 1921 rates (7/12 of $5,890.60 income from partnerships fiscal year ended May 31, 1922	3,436.18
Income subject to tax at 1922 rates	179,079.25

Invested capital

Invested capital books		$320,972.87
Add: Adjustments as shown on corrected balance sheet attached, Exhibit B		77,605.55
Total		398,578.42
Deduct:		
1. Prior years' taxes	$42,287.24	
2. 1921 taxes prorated	10,978.02	
		53,265.26
Invested capital corrected		345,313.16

Explanation of changes

1 and 2. See Explanations No. 1 and No. 2 under 1921.

Excess profits credit

8%	$27,625.05
Exemption	3,000.00
	30,625.05

	Income	Credit	Balance	Rate	Profits tax
20 per cent	$69,062.63	$30,625.05		20%	
	113,452.80		$3,436.18	40%	$1,374.47

42 *Income tax*

Net income, subject to 1921 rates	$3,438.18	
Less: Excess profits tax	1,374.47	
Balance taxable at 10%	2,061.71	
Tax at 10%		$206.17
Total tax (1921 rates)		1,580.64
1922 rates:		
Net income as adjusted, subject to tax at 12½%		179,079.25
Tax at 12½%		22,384.91
Tax at 1921 rates		1,580.64
Tax at 1922 rates		22,384.91
Total tax		23,965.55
Tax previously assessed		25,626.25
Overassessment		1,660.70

1923

Net loss as shown by books		31,309.21
Add:		
1. Profit on sale of Quitaque gin	$685.41	
2. Bad debts	20,747.24	
3. Federal income taxes	33,904.72	
		55,337.37
Balance		24,028.16
Deduct:		
4. Depreciation	6,200.83	
5. Income from gins	967.20	
6. Income from partnership	8,915.10	
		16,083.13
Net income as adjusted		7,945.03

Explanation of changes

1. Profit on sale of Quitaque Gin has been computed in accordance with article 1561, Regulations 62, as follows:

Cost	$3,064.59
Sale price	3,750.00
Profit	685.41

43 2. Bad debts have been disallowed since these amounts have not been determined worthless and charged off in accordance with article 151, Regulations 62.

3. See Explanation No. 1 under 1921.

4. See Explanation No. 7 under 1921.

5. See Explanation No. 2 under 1921.

6. See Explanation No. 6 under 1921.

Computation of tax

Net income as adjusted	$7,945.03
Less: Exemption	2,000.00
Balance taxable at 12½%	5,945.03
Tax at 12½%	743.13
Tax previously assessed	5,578.89
Overassessment	4,835.76

Your claims for refund of $6,148.61, $1,329.69, and $1,813.39 for the years 1921, 1922, and 1923, respectively, have been given careful consideration and adjusted in accordance with the above statements.

The overassessments shown herein will be made the subject of certificates of overassessment which will reach you in due course through the office of the collector of internal revenue for your district, and will be applied by that official in accordance with section 284 of the revenue act of 1926.

The right of petition as indicated on page one of this letter refers only to any deficiency in tax indicated herein, inasmuch as there is no provision in the revenue act of 1926 granting the right of petition against the determination of any overassessment found upon a review of your return.

44 Payment should not be made until a bill is received from the collector of internal revenue for your district, and remittance should then be made to him.

Exhibit No. "5" to petition

IT:AR:A-4-PAB

OCTOBER 13, 1928.

MEMPHIS COTTON OIL COMPANY,
Memphis, Texas.

SIRS: A review of the report submitted by the internal revenue agent in charge, Dallas, Texas, covering your tax liability for the years 1921, 1922, 1923 and the fiscal year ended May 31, 1926, discloses a deficiency of $5,470.51 for the fiscal year ended May 31, 1926, and an overassessment of $11,288.76 for the years 1921, 1922 and 1923.

The recommendations of the revenue agent above indicated have been approved by this office after consideration of the protest filed with said agent in connection therewith. If you acquiesce in the proposed tax liability as shown in this letter and the accompanying statement, and desire to make this determination final, you are requested to execute the enclosed Form 866 and forward both original

and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:AR:A-4-PAB.

If, however, you do not acquiesce in all of the proposed changes, you will be afforded an opportunity for a hearing in the Unit at Washington upon request.

If no reply is received within 15 days from the date of
45 this letter it will be assumed that no hearing is desired and the bureau will proceed to close the case in the usual manner.

If after said hearing and consideration by this office of evidence or briefs of argument submitted, the commissioner finally determines that there is a deficiency, you will be advised thereof by registered mail. Should you not agree to the deficiency as finally determined by the commissioner, you will be allowed 60 days from the date of mailing of the registered letter (not counting Sunday as the sixtieth day) in which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Respectfully,

C. B. ALLEN,
Deputy Commissioner.
By
Head of Division.

Enclosures:
Statement
Form 866
Form 882

Memphis Cotton Oil Company—Statement

1922

Net income as shown by books		$152,007.90
Add:		
1. Machinery charged to repairs		12,031.97
2. Frame building charged to repairs		742.15
3. Profit on sale of Hedley lots		600.00
4. Federal income taxes		34,535.75
		199,917.77
Deduct:		
5. Income from gins	$2,117.42	
6. Income from partnerships	7,749.33	
7. Depreciation	3,506.36	
8. Loss on sale of Hedley Gin	889.16	
9. Loss—Rosamond Gin Co. stock	3,140.07	
		17,402.34
Net income as adjusted		182,515.43

46 Explanation of changes

1 and 2. See Explanation No. 4 under 1921.

3. Profit on sale of lots has been computed in accordance with Article 1561, Regulations 62, as follows:

Cost	None.
Sale price	$600.00
Profit	600.00

4. See Explanation No. 1 under 1921.
5. See Explanation No. 2 under 1921.
6. See Explanation No. 6 under 1921.
7. See Explanation No. 7 under 1921.
8. Loss on sale of Hedley Gin has been allowed in accordance with Article 1561, Regulations 62, as follows:

Value of interest sold	$6,389.16
Sale price	5,500.00
Loss	889.16

9. Loss on stock of Rosamond Gin Company has been allowed in accordance with Article 144, Regulations 62, as follows:

Cost	$47,245.17
Received	46,454.15
Loss adjusted	791.02
Profit reported	2,349.05
Loss allowed	3,140.07

Income subject to tax at 1921 rates

Net income	182,515.43
Income subject to tax at 1921 rates (7/12 of $5,890.60 income from partnerships fiscal year ended May 31, 1922)	3,436.18
Income subject to tax at 1922 rates	179,079.25

47

Invested capital

Invested capital books		$320,972.87
Add: Adjustments as shown on corrected balance sheet attached, Exhibit B		77,605.55
Total		398,578.42
Deduct:		
1. Prior years' taxes	$42,287.24	
2. 1921 taxes prorated	10,978.02	
		53,265.26
Invested capital corrected		345,313.16

Explanation of changes

1 and 2. See Explanations No. 1 and No. 2 under 1921.

Excess profits credit

8%	$27,625.05
Exemption	3,000.00
	30,625.05

	Income	Credit	Balance	Rate	Profits tax
20%	$69,062.63	$30,625.05		20%	
	113,452.80		$3,436.18	40%	$1,374.47

Income tax

Net income, subject to 1921 rates	$3,436.18	
Less: Excess profits tax	1,374.47	
Balance taxable at 10%	2,061.71	
Tax at 10%		$206.17
Total tax (1921 rates)		1,580.64
1922 rates:		
Net income as adjusted, subject to tax at 12½%		179,079.25
Tax at 12½%		22,384.91
Tax at 1921 rates		1,580.64
Tax at 1922 rates		22,384.91
Total tax		23,965.55
Tax previously assessed		25,626.25
Overassessment		1,660.70

48 *1923*

Net loss as shown by books		$31,309.21
Add:		
1. Profit on sale of Quitaque Gin	$685.41	
2. Bad debts	20,747.24	
3. Federal income tax	33,904.72	
		55,337.37
Balance		24,028.16
Deduct:		
4. Depreciation	6,200.83	
5. Income from gins	967.20	
6. Income from partnership	8,915.10	
		16,083.13
Net income as adjusted		7,945.03

Explanation of changes

1. Profit on sale of Quitaque Gin has been computed in accordance with article 1561, Regulations 62, as follows:

Cost	$3,064.59
Sale price	3,750.00
Profit	685.41

2. Bad debts have been disallowed since these amounts have not been determined worthless and charged off in accordance with article 151, Regulations 62.

3. See Explanation No. 1 under 1921.

4. See Explanation No. 7 under 1921.

5. See Explanation No. 2 under 1921.

6. See Explanation No. 6 under 1921.

49 *Computation of tax*

Net income as adjusted	$7,945.03
Less: Exemption	2,000.00
Balance taxable at 12½%	5,945.03
Tax at 12½%	743.13
Tax previously assessed	5,578.89
Overassessment	4,835.76

Your claims for refund of $6,148.61, $1,329.69, and $1,813.39 for the years 1921, 1922, and 1923, respectively, have been given careful consideration and adjusted in accordance with the above statements.

The overassessments shown herein will be made the subject of certificates of overassessment which will reach you in due course through the office of the collector of internal revenue for your district, and will be applied by that official in accordance with section 284 of the revenue act of 1926.

The right of petition as indicated on page one of this letter refers only to any deficiency in tax indicated herein, inasmuch as there is no provision in the revenue act of 1926 granting the right of petition against the determination of any overassessment found upon a review of your return.

Payment should not be made until a bill is received from the collector of internal revenue for your district, and remittance should then be made to him.

50 *Exhibit No. "6" to petition*

IT:AR:A-4-PAB JANUARY 26, 1929.

MEMPHIS COTTON OIL COMPANY,
Memphis, Texas.

SIRS: Your claims for refund of $1,329.69 and $1,813.39 for the years 1922 and 1923, respectively, have been examined.

The basis of the claims is that your net income for 1922 should be $194,372.46 and for 1923, $30,123.71. No evidence has been filed with the claims to support your contentions. Article 1304 of Regulations states in part that:

"All facts relied upon in support of the claims should be clearly set forth in detail under oath."

Your attention is also directed to general counsel's Memorandum 1020, Cumulative Bulletin VI-1, page 119, Treasury Decision 4002, Cumulative Bulletin VI-1, page 121, and Treasury Decision 4211, Internal Revenue Bulletin, Volume VII, No. 39, page 9.

Since the information on file with the claims does not meet the requirements of article 1304 of Regulations 69, and the claims do not indicate that the taxes have been illegally assessed, they will be rejected. The rejection will officially appear in a schedule to be approved by the commissioner.

Respectfully,

C. B. ALLEN,
Deputy Commissioner.
By
Head of Division.

51 *Exhibit No. "7" to petition*

IT:AR:A-4-PAB APRIL 2ND, 1929.

COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

SIR:

In re: Memphis Cotton Oil Company, Memphis, Texas.

Referring to your letter of January 26th, 1929, wherein you proposed to reject the claims for refund of the above company for the years 1922 and 1923, for the alleged reason that the claims filed did not meet the requirements of article 1304 of Regulations 69, you are hereby advised that the taxpayer does not acquiesce in this decision, and a conference has been arranged in your office for April 9th, 1929, at two p. m.

Subsequent to the filing of said claims, a revenue agent audited the books of the taxpayer for the years 1922 and 1923, and by a report dated February 7th, 1928, found that the taxpayer was entitled to refunds of $1,660.70 and $4,835.76 for the years 1922 and 1923, respectively. Subsequently, on October 13th, 1928, the commissioner addressed a letter to the taxpayer finding overassessments of $1,660.70 and $4,835.76 for the years 1922 and 1923, respectively. On page 10 of the commissioner's said letter of October 13th, 1928, the following statement is made:

"Your claims for refund of $6,148.61, $1,329.69, and $1,813.39, for the years 1921, 1922, and 1923, respectively, have been given careful consideration and adjusted in accordance with the above statements.

52 While it would not appear to be necessary to amend the original claims filed for the years 1922 and 1923, after the commissioner had audited the books of the taxpayer and found the overassessments above referred to for said years, the taxpayer, however, does hereby amend its said claims for refund for 1922 and 1923, respectively, by specifically claiming the overassessments of $1,660.70 and $4,835.76 for the years 1922 and 1923, respectively, as outlined in the commissioner's said letter of October 13, 1928, a copy of which is attached hereto and made a part hereof.

Respectfully,

MEMPHIS COTTON OIL COMPANY,
By (Signed) WALTER E. BARTON,
Attorney for Taxpayer.

Encl.

Subscribed and sworn to before me, a notary public, this —— day of April, 1929.

[SEAL.]

———— ————,
Notary Public.

My commission expires ————.

I hereby certify that I prepared the foregoing amendment of the claims for refund for 1922 and 1923 of the Memphis Cotton Oil Com-

pany, of Memphis, Texas, and I know of my own knowledge that the facts stated therein are true.

(Signed) WALTER E. BARTON.

53 II. *General traverse*

Filed June 17, 1930

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

CHARLES B. RUGG,
Assistant Attorney General.

III. *Argument and submission of case*

On November 4, 1931, this case was argued and submitted on merits by Mr. Walter E. Barton for the plaintiff and by Mr. John A. Rees for the defendant.

54 IV. *Special findings of fact, conclusion of law, and opinion of the court by Littleton, J.*

Filed May 31, 1932

Mr. Walter E. Barton for the plaintiff.

Mr. R. C. Winters and Mr. Raymond C. Cushwa were on the brief.

Mr. John A. Rees, with whom was Mr. Assistant Attorney General Charles B. Rugg, for the defendant.

Plaintiff sues to recover $6,496.46, overpayments of income tax for 1922 and 1923 in the amounts of $1,660.70 and $4,835.76, respectively, with interest thereon from the dates on which payments were made. The overpayments are admitted. The Commissioner of Internal Revenue refused to refund the overpayments for the reason that, although the claims for refund were timely filed, the grounds thereof and the facts stated therein were insufficient in law to authorize him to allow and refund the overpayments. The only defense to this suit is that the claims for refund were insufficient to entitle the plaintiff to a refund, and, upon denial thereof, to maintain suit to recover the overpayments.

Special findings of fact

1. The plaintiff, a Texas corporation, duly made and filed its return for the calendar year 1922 showing a net income of $205,010.02 and a tax of $25,626.25, which was paid in four installments of $6,250, $6,563.12, $6,406.57, and $6,406.56 on March 11, June 14, September 13, and December 7, 1923, respectively.

The correct net income for 1922 was $182,515.43 and the correct tax payable thereon was $23,965.55. Plaintiff overpaid its income tax for 1922 in the amount of $1,660.70.

2. Plaintiff duly made and filed its return for the calendar year 1923 showing a net income of $44,631.08 and a tax of $5,578.89, which was paid in four installments of $1,393.94, $1,393.98, $1,395.48, and $1,395.49 on March 7, June 12, September 12, and December 6, 1924, respectively.

The correct net income for 1923 was $7,945.03 and the correct tax payable thereon was $743.13. Plaintiff overpaid its tax for 1923 in the amount of $4,835.76.

3. June 30, 1927, plaintiff filed a timely claim for refund, duly verified under oath of its president, for 1922 on the form prescribed by the Bureau of Internal Revenue, claiming a refund of
55 $1,329.69, or such greater amount as should be legally refundable. Plaintiff stated on the face of this claim for refund as follows:

"Deponent verily believes that this application should be allowed for the following reasons:

"The statement attached hereto shows—

1. That the amount of tax paid for this year was	$25,626.25
2. And that the correct amount of tax due was	24,296.56
3. And there was overpaid in error	1,329.69

4. Refund of which is requested and with interest as provided by law."

"The statement attached to this claim by the plaintiff stated as follows:

Net income per books	$159,836.71
Taxable net income	194,372.46
Difference	34,535.75

Computation of tax

Net income	$194,372.46
12½ per cent	24,296.56
Previously paid	25,626.25
Overpaid	1,329.69

4. On the same day, to wit, June 30, 1927, plaintiff filed a timely claim for refund, duly verified under oath, for 1923 on the form prescribed by the Bureau of Internal Revenue claiming a refund of $1,813.39, or such greater amount as should be legally refundable.

Plaintiff stated on the face of this claim as follows:

"Deponent verily believes that this application should be allowed for the following reasons:

"The statement attached hereto shows:

1. The tax paid is	$5,578.85
2. The correct tax due, as	3,765.46
3. Tax overpaid in error	1,813.39

4. Refund of which is requested and with interest as provided by law."

5. "The statement prepared by plaintiff and attached to this claim for refund was as follows:

Net loss per books	$3,781.01
Taxable net income	30,123.71
Difference	33,904.72

Computation of tax

Net income	30,123.71
Tax 12½ per cent	3,765.46
Tax paid	5,578.85
Overpaid	1,813.39

6. Upon receipt of these claims for refund the Commissioner of Internal Revenue, in order to decide upon the merits thereof, made an investigation and an audit of the books and records of the plaintiff for 1922 and 1923 through an internal revenue agent in the office of the internal revenue agent in charge at Dallas, Texas, to
56 whom instructions were given by the commissioner to make such audit. The internal revenue agent examined and audited plaintiff's books and records and made a full detailed report of his findings to the Commissioner of Internal Revenue on February 7, 1928. A copy of this report was furnished to the plaintiff by the internal revenue agent in charge at Dallas, Texas, on April 12, 1928. The report showed the net income as disclosed by the books for each of the years and the correct statutory net income. It also showed the adjustments, the nature, and the amounts of the various items going to make up the difference, with a detailed explanation of each item.

The audit made by the internal revenue agent and the report prepared and filed by him with the commissioner February 7, 1928, showed that the correct taxable net income for 1922 was $182,515.43; that the correct amount of tax payable thereon was $23,965.55; and that the plaintiff had been overassessed in the amount of $1,660.70. The audit and report further showed that the correct taxable net income for 1923 was $7,945.03; that the correct tax payable thereon was $743.13; and that the plaintiff had been overassessed in the amount of $4,835.76.

6. Subsequent to the investigation and audit of plaintiff's books and records for 1922 and 1923 by the internal revenue agent, pursuant to instructions of the commissioner, C. B. Allen, Deputy Commissioner of Internal Revenue in charge of the Income Tax Unit of the Bureau of Internal Revenue, on August 9, 1928, advised the plaintiff by letter of that date that a review of the report submitted by the internal revenue agent in charge at Dallas, Texas, covering the years 1922 and 1923, disclosed overassessments of $1,660.70 for 1922 and $4,835.76 for 1923. This was in exact accordance with the report made by the revenue agent. This letter contained statements showing the details of the computation by which the overassessments were arrived at. The letter advised the plaintiff that if it should

not acquiesce in the adjustments proposed by the bureau, based upon recommendations of the internal revenue agent in his report, it should file its protest and argument with the internal revenue agent in charge at Dallas, Texas, within fifteen days. The letter further stated as follows:

"Your claims for refund of * * * $1,329.69 and $1,813.39 for the year * * * 1922 and 1923, respectively, have been given careful consideration and adjusted in accordance with the above statements. The overassessments shown herein will be made the subject of certificates of overassessment which will reach you in due course through the office of the collector of internal revenue for your district, and will be applied by that official in accordance with section 284 of the revenue act of 1926."

7. Upon the receipt of the aforementioned letter of August 9, 1928, from the Deputy Commissioner of Internal Revenue in charge of the Income Tax Unit, the plaintiff on September 7, 1928, protested against the amount of depreciation allowed in said letter for 1922. Thereafter on October 13, 1928, the Deputy Commissioner of Internal Revenue in charge of the Income Tax Unit of the bureau mailed to the plaintiff a letter in which he denied the protest with respect to depreciation for 1922 and sustained his previous findings, as outlined in his letter to the plaintiff of August 9, 1928. The letter of October 13, 1928, advised plaintiff that if it did not
57 acquiesce in the determination disclosed thereby and the adjustments made therein, it would be given a hearing in the Income Tax Unit at Washington, upon request, within fifteen days. Plaintiff made no protest against this determination and did not request a hearing thereon. This letter contained statements and schedules showing the details of the determination with respect to the tax for 1922 and 1923, disclosing the overassessments for each of the years in the amounts set forth in the revenue agent's report and in the first letter of the deputy commissioner of August 9, 1928. The letter of October 13, 1928, concluded with the same statements concerning the claims for refund and the overassessments for 1922 and 1923, as above quoted from the letter of August 9, 1928.

8. Nothing further was done with reference to the tax liability of plaintiff and the overassessments for 1922 and 1923, or with respect to its claims for refund for those years until January 26, 1929, when C. B. Allen, Deputy Commissioner of Internal Revenue in charge of the Income Tax Unit of the Bureau of Internal Revenue, prepared and mailed to the plaintiff a letter advising it that its claims for refund for 1922 and 1923 would be rejected. This letter was as follows:

"Your claims for refund of $1,329.69 and $1,813.39 for the years 1922 and 1923, respectively, have been examined.

"The basis of the claims is that your net income for 1922 should be $194,372.46 and for 1923, $30,123.71. No evidence has been filed with the claims to support your contentions. Article 1304 of Regulations states in part that:

"'All facts relied upon in support of the claims should be clearly set forth in detail under oath.'

"Your attention is also directed to general counsel's Memorandum 1020, Cumulative Bulletin VI–1, page 119, Treasury Decision 4002, Cumulative Bulletin VI–1, page 121, and Treasury Decision 4211, Internal Revenue Bulletin, Volume VII, No. 39, page 9.

"Since the information on file with the claims does not meet the requirements of article 1304 of Regulations 69, and the claims do not indicate that the taxes have been illegally assessed, they will be rejected. The rejection will officially appear in a schedule to be approved by the commissioner."

9. On April 2, 1929, the plaintiff by its attorney in fact wrote the following letter to the Commissioner of Internal Revenue, to which letter was attached a copy of the letter of the deputy commissioner of October 13, 1928:

"Referring to your letter of January 26th, 1929, wherein you proposed to reject the claims for refund of the above company for the years 1922 and 1923, for the alleged reason that the claims filed did not meet the requirements of article 1304 of Regulations 69, you are hereby advised that the taxpayer does not acquiesce in this decision, and a conference has been arranged in your office for April 9th, 1929, at two p. m.

"Subsequent to the filing of said claims, a revenue agent audited the books of the taxpayer for the years 1922 and 1923, and by a report dated February 7th, 1928, found that the taxpayer was entitled to refunds of $1,660.70 and $4,835.76 for the years 1922 and
1923, respectively. Subsequently, on October 13th, 1928, the
58 commissioner addressed a letter to the taxpayer finding over-
assessments of $1,660.70 and $4,835.76 for the years 1922 and 1923, respectively. On page 10 of the commissioner's said letter of October 13th, 1928, the following statement is made:

"'Your claims for refund of $6,148.61, $1,329.69, and $1,813.39, for the years 1921, 1922, and 1923, respectively, have been given careful consideration and adjusted in accordance with the above statements.'

"While it would not appear to be necessary to amend the original claims filed for the years 1922 and 1923, after the commissioner had audited the books of the taxpayer and found the overassessments above referred to for said years, the taxpayer, however, does hereby amend its said claims for refund for 1922 and 1923, respectively, by specifically claiming the overassessments of $1,660.70 and $4,835.76 for the years 1922 and 1923, respectively, as outlined in the commissioner's said letter of October 13, 1928, a copy of which is attached hereto and made a part hereof."

10. On October 23, 1929, the commissioner rejected plaintiff's claims for refund for 1922 and 1923 on the ground that they were not sufficient claims for refund under the statute and that allowance and refund of the overpayments for 1922 and 1923 were barred by

the statute of limitation. On the same date he notified the plaintiff of this rejection.

11. At all times herein mentioned C. B. Allen was the duly appointed, qualified, and acting deputy commissioner of internal revenue in charge of income taxes, with full power and authority to make the findings and decisions set forth in the letters of August 9, and October 13, 1928, and January 26, 1929, to the same extent and purpose as though made by the Commissioner of Internal Revenue personally.

Conclusion of law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover $6,496.46, with interest as provided by law.

It is therefore adjudged and order that the plaintiff recover of and from the United States the sum of six thousand four hundred ninety-six dollars and forty-six cents ($6,496.46), with interest at 6 per cent per annum on $1,660.70 from December 7, 1923; on $650.81 from March 7, 1924; and $1,393.98 from June 12, 1924; $1,395.48 from September 12, 1924; and on $1,395.49 from December 6, 1924, to such date as the Commissioner of Internal Revenue may determine in accordance with the provisions of section 177 (b) of the Judicial Code, as amended by section 615 of the revenue act of 1928.

Opinion

LITTLETON, Judge, delivered the opinion of the court:

The question in this case is whether the Commissioner of Internal Revenue was justified in rejecting plaintiff's claims for refund for 1922 and 1923 on the ground that they were insufficient to constitute claims under the statute, and in refusing to schedule the over-
59 assessments and allow a refund of the overpayments for the years involved, and whether in view of such rejection the plaintiff is entitled to maintain this suit.

We are of opinion that the Commissioner of Internal Revenue had authority under the claims as filed and the facts before him to allow the overpayments and to refund the amounts thereof after the expiration of the period of limitation within which he could have made such allowance and refund without a claim, and that upon the facts as disclosed by the findings, the plaintiff is entitled to maintain this suit upon the commissioner's rejection of the claims.

The amount of the overpayment for each year is not in question.

The claims in question were timely filed. They were finally rejected by the commissioner on the sole ground that the plaintiff did not set forth in the claims at the time they were filed the specific ground upon which the overpayment was claimed and did not set forth the detailed facts upon which it relied to show that the correct

net income and correct tax for each of the years was less than the net income shown in the returns and the tax paid thereon. The claims for refund, as originally filed by the plaintiff, gave the commissioner jurisdiction over the matter of an overpayment for the years for which the claims were filed. Factors & Finance Co., Inc., v. United States, 56 Fed. (2d) 902. Lancaster Cotton Mills v. United States, No. J–596, decided this date. He had authority under the statute to allow and refund such overpayment as he might determine had been made on the basis of any facts before him at the time the claims were filed, or upon facts thereafter obtained by him from an examination of the plaintiff's books and records.

After the refund claims were filed and before he had made any decision thereon or taken any action with respect thereto, the commissioner directed an agent of his office to make an examination and audit of the plaintiff's books and records for the years for which the claims had been filed and to submit a report of such investigation and audit for the purpose of enabling him to determine and pass upon the merits of the claims. This investigation and audit were duly made and a detailed report thereof showing the correct net income, correct tax, and the amount of the overassessment with a statement of the various items and amounts causing the adjustments shown, with a detailed explanation of each item. The revenue agent made this report to the commissioner on February 7, 1928, and a copy of the same was thereafter furnished to the plaintiff. Upon receipt of the report the commissioner entered upon consideration of plaintiff's claims for refund and in the light of facts disclosed by the returns filed, the record in the case, and the facts and information disclosed in the revenue agent's report, made an audit of the plaintiff's tax liability for the years 1922 and 1923 and advised the plaintiff that upon review of the agent's reports and after consideration of the claims for refund he had determined overassessments of $1,660.70 for 1922 and $4,835.76 for 1923, which were the overassessments shown in the revenue agent's report. The commissioner therefore, prior to his consideration of the claims and before he had taken any action thereon, was fully informed as to the reasons for the overpayments and the detailed facts to support the same. He was fully advised, and, so far as concerned his jurisdiction and authority to act under the statute with respect to the claimed over-
60 payments, it made no difference whether the facts showing the overpayments were furnished in the first instance by the plaintiff as a part of its claims for refund or were already in the possession of the commissioner, or were obtained by him after the filing of the claims by an examination and audit of the plaintiff's books of accounts. Factors & Finance Co., Inc., v. United States, supra.

The plaintiff might have amended the claims before the commissioner had acted thereon so as to state the facts relied upon, but the facts obtained by the commissioner before he had acted rendered

amendment unnecessary and fulfilled the requirement of the regulations that all facts relied upon should be set forth by the taxpayer. Although we think it is unimportant whether the commissioner obtained the facts before or after the expiration of the period within which he could have allowed an overpayment without a claim, it appears in this case that so far as 1923 is concerned the grounds of the claim and all the facts necessary to a decision whether there had been an overpayment for the year were furnished to the commissioner on February 7, 1928, before the expiration of time within which an original claim for refund could have been filed for 1923.

The facts considered by the commissioner, and upon which he concluded that there had been overassessments in the amounts involved in this suit for the years 1922 and 1923, were supplied by the plaintiff to the commissioner through his agent and at his direction. The commissioner, therefore, was not justified in rejecting the claims and in refusing to allow the overpayments disclosed by the facts furnished him on the ground that the claims were insufficient. Nor can we agree with the defendant that the plaintiff may not maintain this suit to recover the admitted overpayments because the facts before the commissioner at the time he acted were not originally set forth by the plaintiff in the claims which it filed. We think the claims, considered in the light of the facts before the commissioner as disclosed by the record, were sufficient to entitle the plaintiff to sue upon the rejection thereof. The commissioner was not misled. He had before him all the facts that the taxpayer could furnish and he had every opportunity to correct any errors that had been made in the assessment and collection of the tax for the years involved. The rule that the taxpayer may not bring suit unless the commissioner has been informed of the matters made the basis of the suit and has been afforded an opportunity to consider the same does not, therefore, apply in this case.

Judgment will be entered in favor of plaintiff for $6,496.46 with interest as provided by law. It is so ordered.

WHALEY, Judge; WILLIAMS, Judge; GREEN, Judge; and BOOTH, Chief Justice, concur.

61 **V. *Judgment***

At a Court of Claims held in the city of Washington on the 31st day of May, A. D., 1932, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of six thousand four hundred ninety-six dollars and forty-six cents ($6,496.46), with interest at six per cent per annum on $1,660.70 from December 7, 1923; on

$650.81 from March 7, 1924; and $1,393.98 from June 12, 1924; $1,395.48 from September 12, 1924; and on $1,395.49 from December 6, 1924, to such date as the Commissioner of Internal Revenue may determine in accordance with the provisions of section 177 (b) of the Judicial Code, as amended by section 615 of the revenue act of 1928.

62 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1932

Supreme Court of the United States

Order allowing certiorari

Filed October 17, 1932

The petition herein for a writ of certiorari to the Court of Claims is granted, and the case is assigned for argument immediately following the argument of case No. 234, United States of America vs. Henry Prentiss & Co., Inc.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1932